

**United States Department of Labor
Employees' Compensation Appeals Board**

P.S., Appellant

and

**U.S. POSTAL SERVICE, RULEVILLE POST
OFFICE, Ruleville, MS, Employer**

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**Docket No. 20-1541
Issued: April 19, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 16, 2020 appellant filed a timely appeal from a July 24, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish greater than 10 percent permanent impairment of the right upper extremity, for which he previously received a schedule award.

FACTUAL HISTORY

On August 7, 2018 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2018 he pulled his right shoulder when reaching to place

¹ 5 U.S.C. § 8101 *et seq.*

mail into a mailbox while in the performance of duty. By decision dated October 19, 2018, OWCP accepted the claim for impingement syndrome of the right shoulder.

The record reflects that appellant underwent an OWCP-authorized arthroscopic right shoulder extensive debridement, a distal clavicle excision, and subacromial decompression on December 4, 2018, performed by Dr. Jay Culpepper, a Board-certified orthopedic surgeon. The report notes a pre- and postoperative diagnosis of a right shoulder rotator cuff tear.

OWCP referred appellant for a second opinion evaluation with Dr. Daniel Dare, a Board-certified orthopedic surgeon, for an evaluation of appellant's right shoulder. Dr. Dare reviewed the medical evidence of record in relation to his accepted July 17, 2018 employment injury. On examination he found that appellant's complaints of pain were fairly minimal and opined that his work-related condition had resolved with no further need for treatment. Dr. Dare diagnosed right shoulder impingement syndrome, status post decompression and debridement of partial rotator cuff tear.

On December 4, 2019 appellant filed a claim for a schedule award (Form CA-7).

In a January 10, 2020 letter, Dr. Culpepper found that appellant had reached maximum medical improvement (MMI) for his right shoulder on May 20, 2019. He opined that appellant was unable to return to work in a full-duty capacity and, using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² found 25 percent permanent impairment to the right upper extremity.

On June 3, 2020 OWCP referred appellant's case to Dr. Alan Goodman, a Board-certified allergist serving as an OWCP district medical adviser (DMA). It requested that he review the statement of accepted facts (SOAF), the medical evidence of record and Dr. Culpepper's January 10, 2020 letter and provide an opinion on permanent impairment under the sixth edition of the A.M.A., *Guides*. In a June 26, 2020 report, Dr. Goodman noted that appellant had reached MMI on May 20, 2019, per Dr. Culpepper's report. He noted appellant's previous diagnoses and findings that his subjective complaints of pain were fairly minimal. Dr. Goodman utilized the diagnosis-based impairment (DBI) rating method to find that, under Table 15-5 (Shoulder Region Grid), page 403, the class of diagnosis (CDX) for appellant's right shoulder impingement syndrome resulted in a class 1, grade C with a default value of 10 percent. He derived a grade modifier for functional history (GMFH) and grade modifier for physical examination (GMPE). Dr. Goodman excluded the grade modifier for clinical studies (GMCS) as it was used to make a determination of the injury. He utilized the net adjustment formula, (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX), which resulted in a grade C or 10 percent permanent impairment of the right upper extremity. Dr. Goodman excluded the range of motion (ROM) upper extremity impairment (UEI) from his analysis, reasoning that multiple observers noted normal or within functional limits ROM and that no specific numerical data was provided. He recommended against using Dr. Culpepper's rating reasoning that he failed to provide any supporting documentation to support his finding of 25 percent permanent impairment.

² A.M.A., *Guides* (6th ed. 2009).

By decision dated July 24, 2020, OWCP granted a schedule award for 10 percent permanent impairment for appellant's right upper extremity. The award ran for 31.2 weeks from August 31, 2019 to April 5, 2020 and was based on the June 26, 2020 report from Dr. Goodman.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing federal regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter, which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.⁵ The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.⁶

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning Disability and Health (ICF).⁷ Under the sixth edition, the evaluator identifies the CDX, which is then adjusted by the GMFH, GMPE, and GMCS.⁸ The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).⁹ Evaluators are directed to provide reasons for their impairment rating, including the choice of diagnoses from regional grids and the calculation of the modifier score.¹⁰

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.404.

⁵ For decisions issued after May 1, 2009, the sixth edition of the A.M.A., *Guides* is used. A.M.A., *Guides* (6th ed. 2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁶ *See G.W.*, Docket No. 19-0430 (issued February 7, 2020); *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

⁷ A.M.A., *Guides* 494-531.

⁸ *Id.*

⁹ *Id.* at 521.

¹⁰ *R.R.*, Docket No. 17-1947 (issued December 19, 2018); *R.V.*, Docket No. 10-1827 (issued April 1, 2011).

accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of his right upper extremity.

The Board finds that the opinion of Dr. Goodman, OWCP's DMA, demonstrates that appellant only has 10 percent permanent impairment of his right upper extremity under the sixth edition of the A.M.A., *Guides*. In his June 26, 2020 medical report, Dr. Goodman reviewed previous physical findings, noting that appellant's subjective complaints were fairly minimal. He observed other physical examination findings, providing that appellant had reached MMI on May 20, 2019, per Dr. Culpepper's January 10, 2020 report. Dr. Goodman then addressed appellant's permanent impairment rating, reasoning that multiple observers noted normal or within functional limits ROM and that no specific numerical data was provided and that a ROM impairment rating was not available as no specific numerical data was provided within the medical evidence of record. He indicated that, under Table 15-5, the CDX for appellant's right shoulder injury resulted in a class 1, grade C with a default value of 10 percent. Dr. Goodman derived a GMFH and a GMPE of 1 (based on noted pain with strenuous activity), respectively. He excluded the GMCS as it was used to make a determination of the injury. Dr. Goodman utilized the net adjustment formula $(GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX) = (1-1) + (1-1) + (NA) = 0$, which resulted in no movement from the grade C default value of 10 percent permanent impairment of the right upper extremity. He recommended against using Dr. Culpepper's rating, reasoning that he failed to provide any supporting documentation to support his finding of 25 percent permanent impairment.¹²

The Board finds that Dr. Goodman properly applied the DBI rating method under the standards of the sixth edition of the A.M.A., *Guides* to determine that appellant had 10 percent permanent impairment of his right upper extremity. Dr. Goodman properly determined that it was not possible to use the ROM rating method due to the fact that no specific numerical data was provided within the medical evidence of record.¹³ As such, the Board finds that appellant had no more than the 10 percent permanent impairment of his right upper extremity previously awarded.

Appellant may request a schedule award or increase schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

¹¹ *Supra* note 5 at Chapter 2.808.6(f) (March 2017).

¹² See *L.M.*, Docket No. 12-0868 (issued September 4, 2012); *John L. McClanic*, 48 ECAB 552 (1997) (finding that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides* or does not discuss how he or she arrives at the degree of impairment based on physical findings, his or her opinion is of diminished probative value in establishing the degree of impairment such that OWCP may rely on the opinion of the DMA to apply the A.M.A., *Guides* to the findings reported by the attending physician).

¹³ A.M.A., *Guides* 464 (providing detailed procedures for obtaining valid ROM findings).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish greater than 10 percent permanent impairment of his right upper extremity for which he previously received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board